

[5/7/13 DRAFT]

City of Greensboro

**SMALL BUSINESS ENTERPRISE AND
MINORITY / WOMEN BUSINESS ENTERPRISE
PROGRAM PLAN**

for

**Construction, Professional Services, Goods, and Other
Services**

**Established:
June ___, 2013**

**Greensboro City Council
Melvin Municipal Office Building
Greensboro, North Carolina**

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I. PREAMBLE

ESTABLISHING AN EQUAL BUSINESS OPPORTUNITY PROGRAM TO PROMOTE THE ECONOMIC INCLUSION AND FULL AND EQUITABLE UTILIZATION AND DEVELOPMENT OF SMALL BUSINESS ENTERPRISES AND MINORITY / WOMEN BUSINESS ENTERPRISES IN THE GREENSBORO MARKETPLACE

* * * * *

WHEREAS, on May 7, 2013, the City Council of Greensboro adopted an Equal Business Opportunity Policy Program Plan by adding Section 2.91 to Chapter 2, Article III, Division 4 of the Greensboro Code of Program Plans that authorized the City Manager to adopt and administer a Small Business Enterprise – Minority / Women Business Enterprise Program (“SBE-M/WBE Program”) for firms that engage in business with the City of Greensboro; and

WHEREAS, the purposes of this Program Plan were: (a) to establish a clear policy against discrimination in business transactions and dealings on the basis of race, gender, religion, national origin, ethnicity, age, or disability; (b) to authorize and direct the establishment and administration of narrowly tailored policy and contracting procedures by the City Manager to remedy the ongoing effects of identified marketplace discrimination that is adversely affecting the award of prime contracts and subcontracts to minority- and women-owned businesses in City contracts; and (c) to authorize and direct the establishment and administration of narrowly tailored policy and contracting procedures by the City Manager to prevent the City from becoming a passive participant in private sector marketplace discrimination that is adversely affecting the formation, growth, and competitiveness of small, minority, and women-owned business enterprises in the City’s relevant geographic market from which it routinely purchases goods and services; and

WHEREAS, City Council found that in order to avoid becoming a passive participant in private sector commercial discrimination, it was necessary to establish and firmly enforce a clear policy against discrimination in business on the basis of race, gender, religion, national origin, ethnicity, age, or disability, and further, that pursuant to such policy, the City shall not *contract* with *business firms* that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or *commercial customers*; and

WHEREAS, Such a commercial non-discrimination policy approach has been favorably commented upon by the United States Supreme Court in City of Richmond v. J. A. Croson, 488 U.S. 469, 509-510 (1989), and by other federal courts; and

WHEREAS, after careful and lengthy consideration of a strong basis in evidence, including, but not limited to, disparity studies conducted by the North Carolina Institute of Minority Economic Development in 1992 and 1997, and most recently by MGT of America, Inc. in June 2012, (the findings and recommendations of the latter having been formally adopted by City Council on March 19, 2013), the City Council further determined that it continues to have a compelling interest in assuring that the public funds that are collected from all of its citizens and then spent in City contracting do not serve to finance private prejudice on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination; and

WHEREAS, the City Council further considered a full range of narrowly tailored race- and gender-neutral and race- and gender-conscious remedial policy options that were presented to City Council on March 19, 2013, and that are legally defensible and effective for addressing identified barriers to the full and equal participation of small and minority-owned businesses in City contracting; and

WHEREAS, pursuant to such a strong basis in evidence and such careful policy deliberations, the City Council has authorized and directed the City Manager to adopt and administer an SBE-M/WBE Program that is based upon this factual predicate and consistent with these identified remedial policy options; and

WHEREAS, the City Council further determined that it is in the best interests of the City of Greensboro to enhance competition on City projects by promoting equal opportunity and the full participation of all segments of its business community in a robust and inclusive marketplace environment that is free from the effects of discrimination, and, moreover, that the City is likely to benefit from a discrimination-free marketplace through lower prices for the goods and services it purchases, higher revenues through increased employment opportunities for its citizens, increased business-to-business sales, and a more vibrant local economy; and

WHEREAS, the City Manager has determined that the City's best interests are served by rescinding (as of the effective date shown below) the prior "Minority and Women Business Enterprise Program Plan for Construction, Procurement and Professional Services" as established July 1, 1986 and most recently amended December 15, 2009, and replacing that Plan with the following "Small Business Enterprise – Minority / Women Business Enterprise Program Plan;"

NOW THEREFORE, pursuant to the above factual predicate and the legal authority granted by the City Council, the City Manager hereby promulgates and adopts the following **Small Business Enterprise – Minority / Women Business Enterprise Program Plan** and related forms and procedures for application to eligible City bid solicitations and contracts for construction, professional services, goods and other services contracts.

ADOPTED BY:

Denise Turner Roth, City Manager

DATE: _____

EFFECTIVE AS OF: _____

II. Policy Statement

The following Small Business Enterprise – Minority / Women Business Enterprise Program Plan (“SBE – M/WBE Program Plan”) is adopted to:

- A. Implement the City’s Equal Business Opportunity Policy to remedy the ongoing effects of marketplace discrimination that the City of Greensboro has found continue to adversely affect the participation of SBE – M/WBE firms in City of Greensboro contracts.
- B. To exercise the spending powers of the City of Greensboro in a manner that promotes economic inclusion of all segments of the business population, regardless of race or gender, so as to maximize the economic vitality and development of the Greensboro region.
- C. To provide for the identification of necessary resources for the effective phased-in implementation of all Policy elements contained within the SBE – M/WBE Program as provided for within this Plan.
- D. To clearly communicate the City’s SBE – M/WBE Program Plan and related responsibilities to internal stakeholders within the City and to the external stakeholders within the broader community served by the City.
- E. To establish that the City shall resort to the use of race- and gender-conscious means for addressing disparities within its contract participation only when it is apparent that the use of neutral means alone (as provided in this Program Plan) are likely insufficient to fully remedy the effects of identified discrimination.
- F. It is the Policy of the City to take all necessary, reasonable and legal action to prevent discrimination and to ensure that all businesses, including M/WBEs, are afforded the maximum practicable opportunity to participate in the City’s purchasing and contracting processes.
- G. It is the Policy of the City to ensure that the firms it engages in business with do not discriminate in their solicitation, selection or treatment of Subcontractors, suppliers, vendors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.
- H. The Equal Business Opportunity Office shall have primary oversight responsibility with the full support and cooperation of all other City of Greensboro offices and departments in the establishment and administration of the Policy and procedures established herein.

III. Scope of SBE – M/WBE Program

This SBE – M/WBE Program Plan shall apply to all contracts for the purchase of construction-related services, professional services, goods, real estate development, renovation, maintenance, or other services awarded by, or on behalf of, the City; including, but not limited to, every contract or other agreement between the City of Greensboro and any governmental agency, quasi-governmental agency, corporation, developer or contractor, under which the agency, corporation, developer or contractor

receives any fiscal assistance from or through the City for the purpose of contracting with businesses to perform construction-related services, professional services, goods, real estate development, renovation, maintenance or other services and as such, the City shall require the agency, corporation, developer or contractor to comply with this Program Plan in awarding and administering that contract or agreement; provided, however, that the following categories of contracts shall be excluded from the scope and application of this Program Plan:

- (a) Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program and Airport Concessions Disadvantaged Business Enterprise Program as set forth in 49 CFR Parts 23 and 26 or any successor regulations or legislation;
- (b) Contracts for the purchase of goods or supplies of a unique nature for which the City Originating Department determines there is only a sole source of supply;
- (c) Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;
- (d) Emergency contracts for goods or supplies that the City Manager or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the City to apply the terms of this Program Plan to the contract;
- (e) Contracts for the City's lease or purchase of real property where City is lessee or purchaser; and
- (f) Personal Services grants or contracts involving the unique abilities or style of a particular individual.

IV. Definitions

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of Greensboro contracts is established each year for Construction, Professional Services, Goods and Other Services contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) on an annual basis based upon relative M/WBE availability data to be collected by the City through its Centralized Bidder Registration (“CBR”) system. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the SBE - M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for SBE - M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

Award – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

Best Value Contracting – a purchasing solicitation process which may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable solicitation.

Bidder / Participant – Any person, firm, company, partnership, corporation, association, or joint venture seeking to be awarded a contract or subcontract on a project that is at least partially funded or supported in a pecuniary fashion by the City.

Centralized Bidder Registration System (CBR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register online on the City website. The CBR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CBR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification – the process by which the Equal Business Opportunity Office (EBOO) staff determines a firm to be a bona-fide small, minority-, or women-owned or business enterprise. A firm may apply for multiple Certifications that cover each status category (e.g., SBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The EBOO staff may contract these certification services to a State, regional Certification agency or other entity that agrees to abide by the City's standards and criteria for certification. For purposes of Certification, the City accepts any firm that is certified by the State of North Carolina Secretary of Administration, local government entities, and other organizations identified herein that have been determined by the City Manager or his designee to have adopted Certification standards and procedures similar to those followed by the EBOO, provided the prospective firm satisfies the eligibility requirements set forth in this Program Plan in Sections IV and VII. K.

Certification Application – this form shall be completed by vendors when applying for Certification and/or re-Certification status for participation in the City of Greensboro's SBE - M/WBE Program. This form shall be submitted, to the City's certifying agency, every two years by each certified vendor by the anniversary date of its original Certification.

City – refers to the City of Greensboro, NC.

Commercially Useful Function – an SBE - M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the SBE - M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SBE - M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the SBE - M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SBE - M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an SBE - M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful SBE - M/WBE participation, when in similar transactions in which SBE - M/WBE firms do not participate, there is no such role

performed.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Equal Business Opportunity Office (EBOO) – the City department within the Economic Development and Business Support Services Division that shall have primary oversight responsibility with the full support and cooperation of all other City of Greensboro offices and departments in the establishment and administration of the Policy and procedures established herein.

Equal Business Opportunity Office Director – the Director that is primarily responsible for the management of the EBOO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the SBE - M/WBE Program. The EBOO Director is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Evaluation Preference – A Program Element that may be applied by the Goal Setting Committee to Construction, Professional Services, Goods and Other Services contracts that are to be awarded on a basis that includes factors other than lowest price (i.e., Best Value Contracting), and wherein responses that are submitted to the City by SBE - M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents or Bidder / Participants.

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that is valued at \$30,000 or greater, and that requires formal advertisement in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive, or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee that includes, at a minimum, the Equal Business Opportunity Office Director or designee, and /or the Director of Financial and Administrative Services, and / or the Director of Engineering and Inspections or their designees, and the Director or designee of the Originating Department (assuming the Originating Department is neither the Financial and Administrative Services Department nor the Engineering and Inspections Department) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the Small Minority & Women Business Steering Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes SBE - M/WBE Program Goals for the City of Greensboro (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which **Program Elements** are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent's intent to comply with SBE - M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE

Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of Greensboro website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Equal Business Opportunity Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) See also N.C.G.S. § 143-128.2 and Sections VII. E, F, and G of this Program Plan for more detailed descriptions of Good Faith Effort requirements and procedures.

Graduation – an SBE firm permanently graduates from the City of Greensboro SBE program when it meets the criteria for graduation set forth in Section VII. L. of this Program Plan. A firm's graduation or temporary suspension from the SBE program does not necessarily affect its eligibility to be certified and to participate in the City's SBE - M/WBE Program as an M/WBE. An M/WBE firm permanently graduates from the M/WBE program when it meets the criteria for graduation as set forth in this Program Plan in Section VII. L. An M/WBE firm that graduates from the M/WBE program is no longer eligible to participate in the Race-Conscious Program Elements as described herein at Sections VI. B., VI. D., and VI. F. and is also ineligible to participate in the SBE Program Elements at Sections VI. A., VI. C. and VI. E. of this Program Plan. However, a graduated M/WBE firm may continue to participate in, and benefit from, other Race-Neutral non-industry-specific policies and procurement reforms of the SBE - M/WBE Program as described in Section V. of this Program Plan.

Greensboro Metropolitan Statistical Area (MSA)– also known as the Relevant Marketplace, the 10-county Greensboro – Winston-Salem – Highpoint geographic market area from which the City's MGT Disparity Study Update analyzed contract utilization and availability data for disparity (currently including the counties of Guilford, Randolph, Rockingham, Alamance, Surry, Davidson, Davis, Forsyth, Stokes, and Yadkin).

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the Greensboro – Winston-Salem – High Point Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. SBE owners may not simultaneously have controlling ownership, management, or employment interests in other business firms that do not themselves (and in combination with the certified SBE firm) satisfy the eligibility requirements for SBE certification. An SBE firm must not be a subsidiary or captive affiliate of another firm that cannot satisfy the eligibility requirements for SBE certification. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section IV and in Section VII. K. The M/WBE firm

must also be Independently Owned and Operated in the sense that it cannot be the subsidiary or captive affiliate of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of Greensboro inclusive of Construction, Professional Services, and Goods and Other Services (i.e., manufacturing, wholesale and retail distribution of commodities and non-professional services). This term may sometimes be referred to as “business categories.”

Informal Solicitations – solicitations for contracts that are less than \$30,000 in value, and do not require Formal Solicitations.

Joint Venture Incentives – a Program Element that provides inducements for non-SBE and non-M/WBE firms to collaborate with M/WBE partners in responses to solicitations and in performing a Prime Contract to supply construction services on behalf of the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this Program Element may include Evaluation Preferences that are tied to the percentage of M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain construction maintenance contracts.

Leases and Concessions: the renting of City-owned space on a contractual basis for the purpose of making a profit by selling a commodity/service.

Minority/Women Business Enterprise (M/WBE) – any firm that is certified as either a **Minority Business Enterprise** or as a **Women Business Enterprise**, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more of the identified Minority Group Members and/or women as indicated herein by Industry Category, and that is ready, willing and able to sell goods or services that are purchased by the City of Greensboro:

The categories of Minority Group Members and/or women that are eligible for certification as owning, managing, and controlling M/WBEs by Industry Categories are narrowly tailored based upon Disparity Study Update results as follows:

Construction Prime Contracting: African-Americans and non-Minority females

Construction Subcontracting: African-Americans, Hispanic-Americans, Asian-Americans, Native Americans, and non-Minority females

Professional Services: African-Americans, Hispanic Americans, Native Americans, and non-Minority females

Goods and Other Services: African-Americans, Hispanic-Americans, and non-Minority females

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified as eligible to participate in, and benefit from, the application of the City’s race- or gender-conscious M/WBE Program Elements.

M/WBE Subcontracting Program – a Program Element in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, Goods and Other Services contracts), and M/WBE firms are significantly underutilized in similar private sector subcontract opportunities.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

M/WBE Evaluation Preference – a Program Element that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction Manager, Construction Manager at Risk, and Professional Services contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the **Significant Business Presence** requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Program Plan is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands regardless of race.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes of North America as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the City department or authorized representative of the City which issues a solicitation, or for which a solicitation is issued on behalf of, for its purchase of goods or services.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for the degree of SBE - M/WBE participation of a Respondent team as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of Greensboro for purposes of providing goods or services for the City.

Program Elements – Refers to various SBE - M/WBE Program tools and incentives that are used to encourage greater Prime and subcontract participation by SBE - M/WBE firms, including, but not limited to, bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other SBE - M/WBE Program tools, see Section VI. of this Program Plan).

Race-Conscious – any business classification or Program Element wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and Program Elements that are listed herein under the heading of “Race-Conscious”).

Race-Neutral – any business classification or Program Element wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and Program Elements that are listed herein under the heading of “Race-Neutral”).

Relevant Marketplace – also known as “Greensboro Metropolitan Statistical Area,” the geographic market area for application of the SBE - M/WBE Program, as determined for purposes of collecting data for the MGT disparity study (and for determining eligibility for participation under various Program Elements established by this Program Plan) is defined as the Greensboro Metropolitan Statistical Area (Greensboro – Winston-Salem – Highpoint MSA), currently including the ten counties of Guilford, Randolph, Rockingham, Alamance, Surry, Davidson, Davis, Forsyth, Stokes, and Yadkin.

Respondent – a vendor or Bidder / Participant submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with SBE - M/WBE Program requirements.

SBE Directory – a listing of small businesses that have been certified for participation in the City’s SBE Program Elements.

Significant Business Presence – to qualify for this Program, a SBE - M/WBE firm must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the ten counties that make up the Greensboro Metropolitan Statistical Area (Greensboro MSA), and from which at least 25% of its total full-time, part-time and contract employees are regularly based, and from which a substantial role in the SBE - M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small and Minority / Women Business Enterprise Steering Committee (S/M/WBE Steering Committee) – a voluntary eleven-member citizens committee made up of business trade organization representatives and small or minority business owners, and appointed by the EBOO as an advisory group to: (a) assist the Director of Equal Business Opportunity Office (EBOO) or designee, the City Manager or designee, and City Council in reviewing and monitoring the ongoing administration of the Program Plan and assessing its effectiveness in enhancing SBE - M/WBE participation in City contracts; (b) facilitate activities and outreach efforts by the EBOO Director, the Economic Development and Business Support Department, or Originating Departments; and (c) make recommendations to the EBOO Director or designee, the City Manager or designee, and City Council concerning modifications of such Program Elements and various policies and procedures established pursuant to this Program Plan. S/M/WBE Steering Committee members may participate as advisory non-voting members of Goal Setting Committees.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets fifty percent of the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Enterprise – Minority / Women Business Enterprise Program (SBE - M/WBE Program) – the combination of SBE Program Elements and M/WBE Program Elements contained in this Program Plan.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to contract execution by the City and issuance of a Notice to Proceed.

Suspension – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s SBE - M/WBE Program for a finite period of time due to cumulative contract payments the SBE - M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section VII. L., or pursuant to the Penalties and Sanctions for Non-Compliance set forth in Section VII. J. of this Program Plan.

Utilization Documentation – a binding part of the contract which includes the name of all Subcontractors to be utilized in the contract, specifying the SBE - M/WBE Certification category for each, as approved by the EBOO Director. Additions, deletions or modifications of the utilization

amounts or substitutions or deletions of SBE - M/WBE Subcontractors requires an amendment to be approved by the EBOO Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of this Program Plan as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority female Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Program Plan is not inclusive of MBEs.

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V. Non-Industry Specific Policies and Procurement Reforms

In furtherance of the policies and objectives of this Program Plan, the City Manager or designee shall be responsible for implementing the following procurement policy reforms and non-industry-specific remedies to address ongoing effects of discrimination that adversely affect M/WBE access to public and private sector contracting opportunities, and that will further facilitate the efficient implementation and successful enforcement of the SBE - M/WBE Program:

A. Commercial Nondiscrimination Policy

1. Statement of Policy

It is the policy of the City not to enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring or commercial treatment of vendors, suppliers, Subcontractors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the Relevant Marketplace.

2. Policy Implementation

The Equal Business Opportunity Office shall implement this policy by periodically conducting outreach and distributing educational materials to the City's contracting and vendor community and related trade associations to advise such contractors, vendors and prospective Respondents of this policy and the procedures to be followed in submitting complaints alleging violations of this policy. In addition, the City Manager or designee, the Director of Financial and Administrative Services, the Director of Engineering and Inspections, Directors of other City Originating Departments, and the City Attorney's Office shall insure that the following commercial nondiscrimination clause language is set forth in and incorporated into all the City contracts that result from Formal Solicitations:

Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:

"As a condition of entering into this agreement, the company represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section V. A. 1. of the SBE – M/WBE Program Plan. As part of such compliance, the company shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party."

All Formal Solicitations issued for City contracts shall include the following certification to be completed by the Respondent:

"The undersigned Respondent hereby certifies and agrees that the following information is correct: In preparing its response on this project, the Respondent has considered all proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in "discrimination" as defined in the City's SBE – M/WBE Program Plan, Section V. A. 1.; to wit: discrimination in the solicitation, selection or commercial treatment of any Subcontractor, vendor, supplier or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the response submitted by the Respondent on this project, and terminate any contract awarded based on the response. As part of its response, the Respondent shall provide to the City a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of North Carolina that the Respondent discriminated against its Subcontractors, vendors, suppliers or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the City, the Respondent agrees to comply with the City's Commercial Nondiscrimination Policy as described under its SBE – M/WBE Program Plan, Section V. A. 1."

B. Bid De-briefing

For any contract in which the City has undertaken a Formal Solicitation and subsequent evaluation of responses in accordance with a "Best Value Contracting" method of procurement, the Director of the department issuing the solicitation, or of the department on whose behalf the solicitation was issued, or their designees, shall provide a de-briefing to any non-recommended Respondent, upon request. At a minimum, debriefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the selection for each response that was evaluated. To the extent possible, the de-briefing should also identify for each non-recommended Respondent those areas where its submittal was as not as competitive as others, with an explanation as to why.

C. Financial Assistance

The City Manager's designee shall establish criteria for financial institutions to compete for City deposits and banking services on the basis of their commercial lending practices and performance in the issuance of loans and lines of credit to M/WBE loan and credit applicants. The Director of the EBOO and the City Manager's designee shall also solicit contributions from financial institutions for a revolving working capital fund for M/WBE firms performing on City contracts to be administered by a local credit union or community bank. In addition, the EBOO shall provide referrals to SBE and M/WBE firms for technical assistance resources to assist them in preparing loan and credit applications.

D. Technical Assistance

The EBOO shall enhance business development assistance efforts on behalf of SBE and M/WBE firms through a referral network and training collaborations with North Carolina AT&T, North Carolina State University, and the Small Business and Technology Development Center. EBOO should also

undertake assessments of SBE firms and M/WBE firms regarding their growth and measure the effectiveness of various forms of technical assistance (e.g., number of bids submitted, number of bids won, earnings growth, number of program graduates, etc.).

E. De-bundling of Contracts

Goal Setting Committees assigned to review each prospective bid solicitation in advance of public release for purposes of considering the application of Program Elements to the bid solicitation shall also determine whether the proposed contract is unnecessarily large and whether it might better be de-bundled into several smaller component contracts that would enhance the ability of ready, willing, and able SBE and M/WBE firms to bid and compete. In making such determinations regarding the proposed de-bundling of a contract, the Goal Setting Committee shall balance the Originating Department's arguments regarding the likely impact of de-bundling upon contract cost, performance, and administration against the EBOO's arguments regarding the likely impact upon supplier diversity and economic inclusion of smaller firms. In the event no consensus can be reached by the Goal Setting Committee, the final determination regarding de-bundling of the contract shall be made by the City Manager or his designee.

F. Contract Specification Review

Goal Setting Committees assigned to review each prospective bid solicitation in advance of public release for purposes of considering the application of Program Elements to the bid solicitation shall also review proposed bid specifications for purposes of determining whether they are unnecessarily restrictive and whether they will likely adversely affect the ability of SBEs or M/WBEs to compete. In making such determinations, the Goal Setting Committees shall especially focus upon unreasonably burdensome experience requirements, proprietary name brand specifications that preclude like grade and quality substitutions, and authorized dealership and distributorship requirements that effectively preclude participation of SBE and / or M/WBE firms. If the Goal Setting Committee determines one or more bid specifications are unnecessarily restrictive or have the effect of giving unfair advantage to incumbent firms, it shall direct the Originating Department to modify the solicitation accordingly to make it more inclusive. In the event no consensus can be reached by the Goal Setting Committee regarding amendment of the specifications to make them more inclusive, the final determination shall be made by the City Manager or his designee.

G. Evaluation Panel Diversity

For each Formal Solicitation that uses Best Value Contracting as the method of procurement, the Originating Department shall form an evaluation panel consisting of no fewer than five persons for purposes of reviewing and scoring proposals and making the selection of the vendor or contractor for contract award purposes. At least one of the representatives on the evaluation panel shall be an EBOO staff member or representative designated by the EBOO Director. At least one of the other evaluation panel members shall be from a City department other than the Originating Department. Each evaluation panel member is responsible for thoroughly reviewing and fairly scoring each responsive proposal to the best of his or her ability consistent with the selection criteria posted in the solicitation. In the event an evaluation panel is unable to reach consensus on the recommended selection, each evaluation panel member shall be required to disclose their scoring and provide to the full evaluation panel a written explanation of their reasoning. The Respondent or Bidder / Participant receiving the highest cumulative total of points shall be recommended by the evaluation panel for contract award.

H. Centralized Bidder Registration

The City shall establish an electronic Centralized Bidder Registration (CBR) system to provide the elements and functionalities necessary to advance and facilitate the Program Objectives of the SBE - M/WBE Program stated herein. The CBR system shall be implemented as soon as practicable, and in no event shall it be implemented later than one year after the effective date of this Program Plan. The CBR shall, at a minimum, include the following:

- a. The CBR shall allow a prospective vendor to electronically enter, maintain, and update its vendor registration and profile data. The CBR shall capture relevant vendor contact information, nationally- recognized industry/commodity identification codes, ownership status (e.g., race and gender of ownership, certifications held), length of time in business, number of employees, and the unique identifiers deemed necessary by the City. Vendors shall be required to update critical fields, as defined by the EBOO Director, within 72 hours of any changes. Vendors shall be required to update any changes to their entire registration and profile and confirm their interest in performing work for the City annually.
- b. **Every** vendor that seeks to respond to City solicitations, to receive a City prime contract or subcontract, or to receive payment for work performed, and/or to receive payment for goods or services delivered on behalf of the City, shall be required to register through the CBR System. The City shall designate the acceptable methods for the unique identification of vendors. Each Respondent/vendor must complete registration on the CBR to be eligible to respond to any City solicitations, to receive a contract award, or to receive a payment from the City.
- c. The City shall use the CBR for electronic outreach purposes and send alerts to CBR registrants of upcoming solicitation opportunities based upon the identified industry/commodity codes of CBR registrants or vendor-identified areas of interest, unless such notification is declined.
- d. The CBR shall track all payments, by industry/commodity classification code, that are made to each CBR registrant.
- e. Upon payment by the City to a vendor for goods or services provided, vendors shall be required to provide and aver at such times and in the format required by the City:
 1. Their City vendor identifiers;
 2. The City vendor identifiers for all Subcontractors and suppliers;
 3. The claimed value of the respective goods or services provided by the vendor and any Subcontractor or supplier; and
 4. The nationally-recognized industry/commodity identification codes for all goods or services provided by the vendor and any Subcontractors or suppliers.

The City shall electronically notify such identified Subcontractors and suppliers and require that they confirm and aver payment from Prime Contractors for goods and services for which the City has paid the prime contractor.

- f. The CBR shall provide users the ability to identify prospective Respondents, Subcontractors, and vendors that are ready, willing and able to sell specific types of goods or services. Consistent with applicable law regarding privacy and public records, the City may establish policies regarding the access and use of the CBR system by vendors and by the general public.

- g. The City shall strive to ensure this registration process is integrated with any other registrations required by law or available by common practice. The City Manager or designee may enter into interlocal, intergovernmental, and data-sharing agreements, as necessary for the development of this CBR, in a manner that promotes integration with other registrations. The CBR shall contain links to such other mandatory on-line business registration systems, business licensing applications, and business ownership status Certification applications that are not directly integrated with the CBR, as deemed appropriate by the City.
- h. The City Manager or designee shall convene an advisory group for input on the functionality, design, development and management of the CBR. The user group members appointed by the City Manager or designee for this purpose shall examine and evaluate similar systems, including any federal, state and local government best practices and successful models in the field, in making their recommendations to the City.

VI. Industry-Specific SBE – M/WBE Program Elements

The GSC shall be established by the City Manager or designee in accordance with this Program Plan and shall have the responsibility of evaluating categories of Informal Solicitations and each prospective Formal Solicitation document in advance of posting an advertisement to the public to determine which of the following Program Elements it should apply to a given contract within a particular industry:

A. Race – Neutral Construction Program Elements

The GSC shall consider the application of one or more of the following Race-Neutral Program Elements for each Informal or Formal Solicitation for a City Construction contract:

1. SBE Prime Contract Program

For Construction contracts that are estimated by the City to be at least \$30,000 in value, but not greater than \$500,000 in value, the City may establish an SBE Prime Contractor capacity-building initiative to enhance long-term competition and to provide the City with its “Best Value” on Construction projects using Construction Manager or Construction Manager at Risk delivery methods of contracting. Under this Program Element, the City may allocate up to 20% of weighted selection criteria in favor of the selection of a Respondent that is a certified SBE firm. In addition, the City may waive bonding requirements for these contracts. An SBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to a non-SBE firm. For low-bid and “Best Value” Construction contracts that are estimated by the City to be less than \$30,000 in value, and where there are at least three ready, willing, and able SBE firms available to compete for the contract, the City may reserve competition solely among certified SBE firms. In addition, the City may waive bonding requirements for these contracts. In determining whether the SBE Prime Contract Program should be applied to a particular contract, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of the SBE Prime Contractors in the specific Industry Categories.

2. SBE Subcontracting Program

The GSC may, at its discretion and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to eligible SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform Commercially Useful Functions on the specific contract.

A prospective Respondent, to a City solicitation for which price and scope are defined, shall submit at the time of response such documentation as required by the City that provides:

- i. The name(s) of the SBE Subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each SBE;
- iii. A description of the work that each SBE Subcontractor shall perform; and
- iv. Documentation confirming Subcontractor commitment to perform the work.

A prospective Respondent on a City solicitation for which Respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit at the time of response such documentation as required by the City to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a Respondent to commit in its response to satisfying the SBE subcontracting goal shall render its response non-Responsive.

During the price proposal negotiation phase, Respondents shall be required to submit:

- i. Subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each SBE;
- iii. A description of the work that each SBE Subcontractor shall perform; and
- iv. Documentation confirming subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation to the EBOO no less than 3 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the EBOO. The EBOO shall base its determination of a waiver request on the following criteria:

- i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;
- ii. Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the scope of the contract; and

- iii. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the EBOO, failure of a Prime Contractor to commit in its response to satisfying the SBE subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the EBOO, the failure of a Prime Contractor to attain a subcontracting goal for SBE participation in the performance of its contract shall be considered a material breach of contract, grounds for termination of that contract with the City, and may result in debarment from performing future City contracts, and/or shall be subject to any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the EBOO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated SBE Subcontractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated SBE with one or more other certified SBE Subcontractors and shall submit a waiver request to the EBOO in the event such Good Faith Efforts are unsuccessful.

Upon award of the prime contract to a Respondent, the Prime Contractor shall be required to submit accurate progress payment information with each invoice regarding each of its Subcontractors, including SBE Subcontractors. The EBOO shall audit 100% of the reported payments to SBE and non-SBE Subcontractors to ensure that the Prime Contractor's reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with N.C.G.S. § 143-134.1 (the "Prompt Payment Act"), and such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, no final retainage on the Prime Contract shall be released to the Prime Contractor, and no new City contracts should be issued to the Prime Contractor until the audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

3. HUBZone Program

For any Construction contract estimated by the City to be below \$500,000 in value, the City may establish a HUBZone Prime Contractor capacity-building initiative to enhance long-term competition, to better utilize local firms and residents from the Greensboro MSA HUBZone, or from some other economically distressed geographic area in East Greensboro as designated by the City Manager or his designee, and to thereby provide the City with its "Best Value Contracting" on Construction projects using alternative construction delivery methods of contracting. In such contracts, the GSC may reserve up to 20% of evaluation criteria Points for those firms that are certified HUBZone prime Respondents. A HUBZone Prime Contractor that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE firm. In determining whether a particular contract is eligible for the HUBZone Program, the GSC shall consider:

- i. Whether there are at least three HUBZone firms that are available and capable of performing the prime contract; and
- ii. The degree of underutilization of HUBZone firms in the specific Industry Categories.

For any Construction contract, the GSC may, on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to certified HUBZone firms. Factors to be considered by the GSC in making this determination shall include:

- i. The relative availability of HUBZone firms to perform Commercially Useful Functions on the specific contract; and
- ii. The degree of underutilization of HUBZone firms in the specific Industry Categories.

A prospective Respondent to a City solicitation, for which price and scope are defined, shall submit at the time of response such documentation as required by the City that provides:

- i. The name(s) of the HUBZone Subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each HUBZone Subcontractor;
- iii. A description of the work that each HUBZone Subcontractor shall perform; and
- iv. Documentation confirming HUBZone Subcontractor commitment to perform the work.

A prospective Respondent to a City solicitation, for which Respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit at the time of response such documentation as required by the City to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a Respondent to commit in its response to satisfying the HUBZone subcontracting goal shall render its response non-Responsive.

During the price proposal negotiation phase, Respondents shall be required to submit:

- i. Subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each HUBZone Subcontractor;
- iii. A description of the work that each HUBZone Subcontractor shall perform; and
- iv. Documentation confirming HUBZone Subcontractor commitment to perform the work.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation to the EBOO no less than 3 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the EBOO. The EBOO shall base its determination of a waiver request on the following criteria:

- i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;
- ii. Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the scope of the contract; and

- iii. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the EBOO, failure of a Prime Contractor to commit in its response to satisfying the HUBZone subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the EBOO, the failure of a Prime Contractor to attain a subcontracting goal for HUBZone participation in the performance of its contract shall be a material breach of contract, shall be grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, and/or shall be subject to any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the EBOO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated HUBZone Subcontractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated HUBZone Subcontractor(s) with one or more other certified HUBZone Subcontractor(s) and shall submit a waiver request to the EBOO in the event such Good Faith Efforts are unsuccessful.

Upon award of the prime contract to a Respondent, the prime contractor Prime Contractor shall be required to submit accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors. The EBOO shall audit 100% of the reported payments to HUBZone and non-HUBZone Subcontractors to ensure that the Prime Contractors' reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with N.C.G.S. § 143-134.1 (the "Prompt Payment Act"), and such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, no final retainage on the Prime Contract shall be released to the Prime Contractor, and no new City contracts should be issued to the Prime Contractor until the audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

4. Bonding Assistance Program

The EBOO Director or designee is authorized and directed to establish a workgroup consisting of selected members of the EBOO staff and the S/M/WBE Steering Committee, representatives of the surety industry and representatives of local construction trade associations to research "best practices" in bonding assistance program models and to then recommend to the City Manager the establishment of a Bonding Assistance Program. At a minimum, this workgroup shall consider inclusion of the following elements for this program:

- i. Partnerships with local financial institutions to jointly participate with the City in establishing a pool of funds that can be used for providing bonding assistance to SBE construction firms;
- ii. Technical and financial assistance to SBE prime Respondents to minimize risk of loss and ensure proper management of funds during projects;

- iii. Provide partial bond guarantees supplied by the established pool of funds to assist SBE Respondents in obtaining surety bonds at a competitive rate; and
- iv. Establishment of procedures to segment City Construction projects, where feasible, in a manner that reduces required bonding limits for Respondents.

5. SBE Low Cost Wrap-Up Insurance

The EBOO Director or designee is authorized and directed to establish a workgroup consisting of selected members of the EBOO staff and the S/M/WBE Steering Committee, representatives of the insurance industry and persons with knowledge about and experience with Owner Controlled Insurance Programs (OCIP) to research “best practices” in establishing wrap-up insurance programs for public owners that obtain one low uniform rate for all City contractors working on City contracts for various forms of required insurance, and to then recommend to the City Manager the establishment of a Low Cost Wrap-Up Insurance Program for SBE firms. At a minimum, this workgroup shall consider inclusion of the following elements for this program:

- i. Approaches for obtaining reimbursement from contractors for the premium costs associated with wrap-up insurance;
- ii. Forms of program administration that are consistent with State and local law;
- iii. Maximization of cost savings to the City without increases to liability exposure; and
- iv. Maximization of cost savings to SBE firms without increases to liability exposure.

6. Construction Direct Purchasing

For fairly simple and routine, but labor intensive, construction projects that require the purchase of only a relative few construction supply materials, the GSC may direct the Originating Department to directly purchase in bulk and to warehouse or store some, or all, of the required construction supply materials for all such projects, and to issue bid solicitations that require Bidder / Participants to submit bids based upon labor costs only, with the selected contractor having the responsibility to transport required quantities of construction supplies from the City warehouse to the job site, and for providing construction services associated with the use or installation of the City’s construction supplies. In determining whether to apply this Program Element to a particular series of contracts, the GSC shall consult with the Originating Department to determine the feasibility and cost effectiveness of bulk purchases and warehousing of required construction supplies by the City, and for managing the release of appropriate quantities of warehoused supplies to selected contractors. This Program Element is intended to assist smaller prime contractors that may have difficulty obtaining preferred pricing and credit from construction suppliers where the cost of construction supplies is largely determinative of the lowest responsible bid.

B. Race-Conscious Construction Programs

The GSC shall consider establishment of an overall Annual M/WBE Aspirational Goal in accordance with subsection '1' below and, in addition, shall review each prospective City Construction Formal Solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other Race-Conscious Program Elements ('2' through '7' below) to those Construction solicitations based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious Program Elements indicate that Construction contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors;
- ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors based upon past contract Award and Payment data;
- iii. Whether a particular Program Element is the least burdensome available remedy to non-MBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Construction contracts; and
- iv. Whether the particular Program Element is appropriate for the specific type of Construction contract being procured. Whenever the GSC uses its discretion to apply any of the following Race-Conscious Program Elements to Construction solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the City's Relevant Marketplace for Construction services.

1. Annual M/WBE Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City Construction contracts.

This Annual Aspirational Goal for M/WBE participation in City Construction contracts (prime and subcontract dollars combined) has initially been established at 15% based upon the combined M/WBE availability by industry in accordance with the City's 2012 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the GSC on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CBR system.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the SBE - M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Program Plan.

2. M/WBE Joint Venture Incentives

Under this Program Element, on low-bid City construction prime contracts that are valued in excess of \$1 million, the GSC shall establish a prime contractor capacity-building initiative by reserving competition solely for firms that are Joint Ventures between non-M/WBE firms and certified M/WBE firms. Additionally, the GSC may apply this Program Element in a manner wherein larger M/WBE firms that have graduated, or that are otherwise ineligible to qualify for certification as SBEs or M/WBEs, are encouraged to Joint Venture with certified local M/WBE construction firms to bid on reserved Joint Venture projects. In either case, the GSC shall set a minimum threshold for the percentage of the Joint Venture entity that shall be owned and managed by the certified local M/WBE Joint Venture Partner.

For City construction prime contracts valued in excess of \$1 million that utilize Construction Manager or Construction Manager at Risk delivery methods or other forms of Best Value Contracting, under this Program Element, the City may allocate up to 20% of weighted selection criteria Points in favor of the selection of a Respondent that is Joint Venture between a non-M/WBE firm and a certified M/WBE firm. The percentage of those Joint Venture Incentive Points awarded to the Respondent shall be allocated based upon the relative participation of the certified M/WBE in the Joint Venture as compared to other Respondent Joint Venture firms. Any qualifying Joint Venture Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-SBE and non-M/WBE firms. In determining whether the M/WBE Joint Venture Incentives Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of the M/WBE Prime Contractors in the specific Industry Categories.

3. M/WBE Weighted Contract-Specific Subcontracting Goals

The GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific Construction contract, up to 40%, be subcontracted to eligible M/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms to perform Commercially Useful Functions on the specific contract.

A prospective Respondent on a City solicitation, for which price and scope are defined, shall submit at the time of response such documentation as required by the City that provides:

- i. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each M/WBE;
- iii. A description of the work that each M/WBE Subcontractor shall perform; and
- iv. Documentation confirming Subcontractor commitment to perform the work.

A prospective Respondent to a City solicitation, for which Respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time of response such documentation as required by the City to affirm its intent to meet the subcontracting requirements

indicated in the solicitation. In the absence of a waiver granted by the EBOO, failure of a Respondent to commit in its response to satisfying the M/WBE subcontracting goal shall render its response non-Responsive.

During the price proposal negotiation phase, Respondents shall be required to submit:

- i. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each M/WBE; and
- iii. A description of the work that each M/WBE Subcontractor shall perform.

A Respondent may request a full or partial waiver of this mandatory subcontracting requirement from the EBOO for good cause by submitting unavailability documentation to the EBOO no less than 3 days prior to the solicitation closing date. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the EBOO. The EBOO shall base its determination on a waiver request on the following criteria:

- i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;
- ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and
- iii. Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the EBOO, failure of a Prime Contractor to commit in its response to satisfying the M/WBE subcontracting goal shall render its response non-Responsive.

In the absence of a waiver granted by the EBOO, failure of a Prime Contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of the contract for which it fails to attain its subcontracting goals with the City, and may result in debarment from performing future City contracts, and/or any other remedies available under the terms of its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the EBOO in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated M/WBE Subcontractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated M/WBE Subcontractor(s) with one or more other certified M/WBE Subcontractor(s) and shall submit a waiver request to the EBOO in the event such Good Faith Efforts are unsuccessful.

Upon award of the prime contract to a Respondent, the Prime Contractor shall be required to submit accurate progress payment information with each invoice regarding each of its Subcontractors, including M/WBE Subcontractors. The EBOO shall audit 100% of the reported payments to M/WBE

and non-M/WBE Subcontractor to ensure that the Prime Contractors' reported subcontract participation is accurate. Absent a waiver from the EBOO, a Prime Contractor's failure to reach the required level of M/WBE subcontracting shall be considered a material breach of contract. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with N.C. G. S. § 143 - 134.1 (the "Prompt Payment Act"), and such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, no final retainage on the Prime Contract shall be released to the Prime Contractor, and no new City contracts should be issued to the Prime Contractor until the audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

4. M/WBE Mentor-Protégé Program

The EBOO Director or designee is authorized and directed to establish a workgroup consisting of selected members of the EBOO staff and the S/M/WBE Steering Committee, representatives of the surety industry and representatives of local construction trade associations to research "best practices" in Mentor-Protégé Program models, and to then recommend to the City Manager the establishment of an M/WBE Mentor-Protégé Program and, at a minimum, this workgroup shall consider inclusion of the following elements for this program:

- i. Establishment of program guidelines and a formal process for teaming of more-established and successful Construction firm owners and managers with less-established M/WBE Construction firms to provide management guidance and training in such areas as office procedures, estimating and bidding, bookkeeping and accounting, management of funds, project management, supplier relationships, bonding and insurance, etc.;
- ii. Submission of written mentor-protégé team plans for City approval outlining the expectations and responsibilities of each team member;
- iii. Consideration of incentives for City-approved mentor-protégé teams including such incentives as eligibility for participation in the M/WBE evaluation preferences for mentor-protégé team members on "Best Value Contracting" projects, extended option years for maintenance and repair job order or task order contracts, accelerated permitting and/or expedited payment of invoices; and
- iv. Periodic reports from mentors and protégés regarding progress in achieving objectives and elements of mentor-protégé plans.

5. Minority Inclusion Language in Best Value Construction RFPs

For City construction prime contracts valued at or above \$30,000, and that utilize Construction Manager or Construction Manager at Risk delivery methods or other forms of Best Value Contracting, under this Program Element, the City shall include language in the Formal Bid Solicitation that requires each Respondent to document past outreach efforts to M/WBE firms and past achievements in obtaining subcontractor diversity on both public and private similar projects. Up to 20 percent of available Points allocated to various selection criteria for awarding these contracts shall be reserved for scoring the documentation that Respondents submit in response to this Minority Inclusion Language. Alternatively, a Respondent may be awarded a percentage of these Points on a sliding scale based upon the level of M/WBE participation it has on its team that is performing a Commercially Useful Function.

6. M/WBE Evaluation Preference

For “Best Value” Construction projects using Construction Manager or Construction Manager At Risk delivery methods of contracting, and that are estimated by the City to be at least \$30,000 in value, but not greater than \$500,000 in value, the City may establish an M/WBE Prime Contractor capacity-building initiative to enhance long-term competition. Under this Program Element, the GSC may allocate up to 20% of the total available selection criteria Points for award to a Respondent that is a certified M/WBE firm, and may allocate lesser percentages of total available selection criteria Points for award to Respondent firms based upon the relative value of certified M/WBE firm participation that they have included on their teams to perform a Commercially Useful Function. In addition, the City may waive bonding requirements for these contracts. An M/WBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-SBE and / or non-M/WBE firms. In determining whether the M/WBE Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of the M/WBE Prime Contractors in the specific Industry Categories.

7. Economic Development Project M/WBE Subcontracting Goals

For private sector economic development projects wherein the City is providing some land, tax incentives, infrastructure improvements, or other pecuniary value to the overall project, under this Program Element the GSC shall require the developer to apply mandatory M/WBE subcontract participation goals to the construction portion of the project. Such Economic Development Project M/WBE Subcontracting Goals shall be subject to the same policies and procedures as have been set forth above for Section VI. B. 3. In the event of violation of this requirement, City contract clauses with the developer shall provide for liquidated damages to be paid by the developer in the amount equal to the monetary value of M/WBE subcontracting goals established by the GSC.

C. Race-Neutral Professional Services Program Elements

The GSC shall consider the application of one or more of the following Race-Neutral Program Elements for each City Professional Services solicitation:

1. SBE Vendor Rotation

For professional services contracts that are valued below \$30,000 and that are of a fairly routine nature, the GSC may reserve such contracts for award to a pre-qualified panel of SBE firms on a rotating basis. In determining whether the SBE Vendor Rotation Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors on such contracts; b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis; and c) the degree of underutilization of the SBE Prime Contractors in the specific Industry Categories.

2. SBE Reserve

For professional services contracts that are valued below \$30,000, but that are unique and not recurring on a frequent basis, the GSC may limit solicitation and award of such contracts solely to SBE firms. In determining whether the SBE Reserve Program Element should be applied to a particular contract or

group of contracts, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors on such contracts; and b) the degree of underutilization of SBE Prime Contractors in the specific Industry Categories.

3. SBE Evaluation Preference

For “Best Value Contracting” professional services contracts that are valued at \$30,000 or greater, but less than \$500,000, the City may establish an SBE Prime Contractor capacity-building initiative to enhance long-term competition. Under this Program Element, the GSC may allocate up to 20% of the total available selection criteria Points for award to any Respondent that is a certified SBE firm, and may allocate lesser percentages of total available selection criteria Points for award to Respondent firms based upon the relative value of certified SBE firm participation that they have included on their teams for purposes of performing a Commercially Useful Function. Alternatively, the GSC may reserve such SBE Evaluation Preferences for those SBE firms that have not previously successfully obtained a prime contract from the City. Any SBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-SBE firms. In determining whether the SBE Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of the SBE Prime Contractors in the specific Industry Categories.

D. Race-Conscious Professional Services Program Elements

The GSC shall consider establishment of an overall Annual M/WBE Aspirational Goal in accordance with subsection ‘1’ below and, in addition, shall review each prospective City Professional Services Formal Solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other Race-Conscious Program Elements (‘2’ through ‘3’ below) to those Professional Services solicitation documents based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious Program Elements indicates that Professional Services contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors;
- ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractor and/or M/WBE Prime Contractors based upon past contract award and payment data;
- iii. Whether a particular Program Element is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Professional Service contracts of this type; and
- iv. Whether the particular Program Element is appropriate for the specific type of Professional Services contract being solicited. Whenever the GSC uses its discretion to apply any of the following Race-Conscious Program Elements to Professional Services contracts, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the City’s Relevant Marketplace for Professional Services.

1. Annual M/WBE Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City Professional Services contracts.

This Annual Aspirational Goal for M/WBE participation in City Professional Services contracts (prime and subcontract dollars combined) has initially been established at 11% based upon the combined M/WBE availability by industry in accordance with the City's 2012 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the GSC on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CBR system.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the SBE - M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Program Plan.

2. M/WBE Vendor Rotation

For professional services contracts that are valued below \$30,000 and that are of a fairly routine nature, the GSC may reserve such contracts for award to a pre-qualified panel of M/WBE firms on a rotating basis. In determining whether the M/WBE Vendor Rotation Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors on such contracts; b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis; and c) the degree of underutilization of the M/WBE Prime Contractors in the specific Industry Categories.

3. M/WBE Evaluation Preference

For "Best Value Contracting" professional services contracts that are valued at \$30,000 or greater, but less than \$500,000, the City may establish an M/WBE Prime Contractor capacity-building initiative to enhance long-term competition. Under this Program Element, the GSC may allocate up to 20% of the total available selection criteria Points for award to any Respondent that is a certified M/WBE firm, and may allocate lesser percentages of the total available selection criteria Points for award to Respondent firms based upon the relative value of certified M/WBE firm participation that they have included on their teams for purposes of performing a Commercially Useful Function. Alternatively, the GSC may reserve such M/WBE Evaluation Preferences for those M/WBE firms that have not previously successfully obtained a prime contract from the City. Any M/WBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-SBE and / or non-M/WBE firms. In determining whether the M/WBE Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of M/WBE Prime Contractors in the specific Industry Categories.

E. Race-Neutral Goods and Other Services Program Elements

The GSC shall consider the application of one or more of the following Race-Neutral Program Elements for each City Goods and Other Services solicitation:

1. SBE Vendor Rotation

For Goods and Other Services contracts that are valued below \$30,000 and that are of a fairly routine and recurring in nature, the GSC may reserve such contracts for award to a pre-qualified panel of SBE firms on a rotating basis. In determining whether the SBE Vendor Rotation Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors on such contracts; b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis; and c) the degree of underutilization of the SBE Prime Contractors in the specific Industry Categories.

2. SBE Vendor Evaluation Preference

For “Best Value Contracting” Goods and Other Services contracts that are valued at \$30,000 or greater, but less than \$500,000, the City may establish an SBE Prime Contractor capacity-building initiative to enhance long-term competition. Under this Program Element, the GSC may allocate up to 20% of the total available selection criteria Points for award to any Respondent that is a certified SBE firm, and may allocate lesser percentages of total available selection criteria Points for award to Respondent firms based upon the relative value of certified SBE firm participation that they have included on their teams for purposes of performing a Commercially Useful Function. Alternatively, the GSC may reserve such SBE Vendor Evaluation Preferences for those SBE firms that have not previously successfully obtained a prime contract from the City. Any SBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-SBE firms. In determining whether the SBE Vendor Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of the SBE Prime Contractors in the specific Industry Categories.

3. SBE Reserve

For Goods and Other Services contracts that are valued below \$30,000, but that are unique and not recurring on a frequent basis, the GSC may limit solicitation and award of such contracts solely to SBE firms. In determining whether the SBE Reserve Program Element should be applied to a particular contract or group of contracts, the GSC shall consider: a) whether there are at least three SBEs that are available and capable to perform as Prime Contractors on such contracts; and b) the degree of underutilization of SBE Prime Contractors in the specific Industry Categories.

F. Race-Conscious Goods and Other Services Program Elements

The GSC shall consider establishment of an overall Annual M/WBE Aspirational Goal in accordance with subsection ‘1’ below and, in addition, shall review each prospective City Goods and Other Services Formal Solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other Race-Conscious Program Elements (‘2’ through ‘4’ below) to those Goods and Other Services solicitation documents based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of Race-Conscious Program

Elements indicates that Goods and Other Services contracts of this type have exhibited significant disparities in the utilization of M/WBE Subcontractors and/or M/WBE Prime Contractors;

- ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE Subcontractor and/or M/WBE Prime Contractors based upon past contract award and payment data;
- iii. Whether a particular Program Element is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in Goods and Other Services contracts of this type; and
- iv. Whether the particular Program Element is appropriate for the specific type of Goods and Other Services contract being solicited. Whenever the GSC uses its discretion to apply any of the following Race-Conscious Program Elements to Goods and Other Services contracts, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the City's Relevant Marketplace for Goods and Other Services.

1. Annual M/WBE Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on City Goods and Other Services contracts.

This Annual Aspirational Goal for M/WBE participation in City Goods and Other Services contracts (prime and subcontract dollars combined) has initially been established at 8% based upon the combined M/WBE availability by industry in accordance with the City's 2012 Disparity Study Update findings.

This Annual Aspirational Goal is to be adjusted hereafter by the GSC on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CBR system.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the SBE - M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Program Plan.

2. M/WBE Vendor Rotation

For goods and other services contracts that are valued below \$30,000 and that are of a fairly routine nature, the GSC may reserve such contracts and purchase orders for award to a pre-qualified panel of M/WBE firms on a rotating basis. In determining whether the M/WBE Vendor Rotation Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBE vendors that are available and capable to perform as Prime Contractors on such

contracts; b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis; and c) the degree of underutilization of the M/WBE Prime Contractors in the specific Industry Categories.

3. M/WBE Evaluation Preference

For “Best Value Contracting” goods and other services contracts that are valued at \$30,000 or greater, but less than \$500,000, the City may establish an M/WBE Prime Contractor capacity-building initiative to enhance long-term competition. Under this Program Element, the GSC may allocate up to 20% of the total available selection criteria Points for award to any Respondent that is a certified M/WBE firm, and may allocate lesser percentages of the total available selection criteria Points for award to Respondent firms based upon the relative value of certified M/WBE firm participation that they have included on their teams for purposes of performing a Commercially Useful Function. Alternatively, the GSC may reserve such M/WBE Evaluation Preferences for those M/WBE firms that have not previously successfully obtained a prime contract from the City. Any M/WBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-SBE and / or non-M/WBE firms. In determining whether the M/WBE Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of M/WBE Prime Contractors in the specific Industry Categories.

4. Voluntary M/WBE Distributorship Development Program

For those industry segments of City Goods purchases that have demonstrated very low availability of M/WBE suppliers, M/WBE authorized dealers, or M/WBE distributorships, the GSC may direct Originating Departments to offer certain incentives to those manufacturers and wholesale distributors of those goods and products that voluntarily agree to participate under this Program Element. The application form, compliance procedures, and reporting requirements for the Voluntary M/WBE Distributorship Development Program shall be established by the EBOO. The incentives to be provided to Program Participants may include the addition of up to two additional option years for performance of supply contracts to be exercised at the City’s discretion without further competition, and / or accelerated payments from the City. These incentives are to be extended to the participating manufacturer or wholesale distributor on the condition that it demonstrates continued compliance with the provisions of Program. The Voluntary M/WBE Distributorship Development Program shall require manufacturers and wholesale distributors to apply to the EBOO for entry to the program by completing forms and submitting documentation required by the EBOO. Each applicant must also execute an agreement with the City that identifies at least one M/WBE supplier that the manufacturer or wholesale distributor has agreed to let serve as its authorized dealer or distributorship for the sale of its products to the City on a non-discriminatory basis. The term “non-discriminatory” means that the manufacturer or wholesale distributor applicant has demonstrated to EBOO that the business terms it has extended to the M/WBE authorized dealer or M/WBE distributorship (e.g., geographic scope of territory, volume discounts, credit terms, technical and marketing support, customer type, etc.) are no less advantageous than those given to other non-M/WBE authorized dealers and distributors that sell its products to public and private sector customers. On an annual basis, the EBOO shall evaluate each M/WBE authorized dealership or distributorship initiated under this Program Element to determine whether the manufacturer or wholesale distributor remains in compliance with the non-discriminatory terms of the Program, and therefore remains eligible to receive incentives.

VII. Administration of SBE – M/WBE Program

A. Equal Business Opportunity Office Duties and Responsibilities

The EBOO will be administered and managed by the EBOO Director, who shall report to the Assistant City Manager for Economic Development or his or her designee. The EBOO shall be responsible for coordinating with and managing Originating Departments in their performance of duties related to implementation of this Program Plan, and also for the overall administration of the City's SBE - M/WBE Program Plan. At a minimum, the EBOO **shall**:

1. Report to the City and the public, based on available data, on at least an annual basis as to the City's progress toward satisfying the SBE - M/WBE Program purposes and policy objectives. During the first two years following Program Plan effective date, this reporting will be conducted semi-annually.
2. Formulate, establish, distribute and implement additional forms, rules and procedures for SBE - M/WBE Program waivers, improvements and adjustments to the goal-setting methodologies and Program Elements;
3. Have advance substantive input in a contract specification review process consistent with this Program Plan to ensure that contract solicitation specifications are not unnecessarily restrictive and unduly burdensome to SBE - M/WBE firms;
4. Receive and analyze external and internal information, including statistical data and anecdotal testimony regarding the barriers encountered by SBE - M/WBE firms in attempting to obtain contract opportunities at the City, and the relative effectiveness of various Program Elements in addressing those barriers;
5. Monitor and support the implementation of the SBE - M/WBE Program Plan and propose modifications to appropriate City officials as necessary to fully achieve the purpose and objectives of the Equal Business Opportunity Policy;
6. Provide public education and advocacy internally and externally regarding the purposes and objectives of the SBE - M/WBE Program Plan;
7. Conduct periodic audits of Good Faith Efforts documentation submitted by Respondents to ensure veracity, and impose sanctions in cases of fraud;
8. Provide screening of HUB firm certifications by the State of North Carolina Department of Administrative Services, oversight, and management of certification processes and procedures to ensure consistency with the eligibility criteria, standards, and definitions of Small Business Enterprise (SBE) and Minority / Women Business Enterprise (M/WBE) as stated in this Program Plan. Also maintain and distribute accurate and up-to-date directories of firms that are certified, decertified, or graduated as SBE firms and / or M/WBE firms;
9. Provide public education and advocacy internally and externally regarding the purposes and objectives of the SBE - M/WBE Program;

10. Convene Matchmaker Conferences to enhance business networking opportunities between SBE and M/WBE firms and prospective clients, customers, and business associates, and provide seminars and technical assistance to SBE - M/WBE firms to enhance their ability to effectively compete for City contracts;
11. Investigate alleged violations of this Program Plan and provide written recommendations to appropriate authorities for remedial action and imposition of sanctions and penalties when necessary;
12. Determine Prime Contractor compliance with SBE - M/WBE Program requirements prior to contract award recommendations to City Manager or designee, and also prior to Originating Department's close-out of contracts and release of final retainage;
13. Oversee the maintenance of an accurate contract performance reporting system, and collaborate with the Information Technology Department and the Financial and Administrative Services Department to establish and maintain the Centralized Bidder Registration system as specified in this Program Plan; and
14. Provide staff support for the S/M/WBE Steering Committee, the GSC, and established work groups that are convened subject to this Program Plan.

B. Goal Setting Committee

Each Goal Setting Committee (GSC) is to be appointed and chaired by the City Manager or his designee. The GSC shall include, at a minimum, the EBOO Director or designee, and /or the Director of Financial and Administrative Services, and / or the Director of Engineering and Inspections or their designees, and the Director or designee of the Originating Department (assuming the Originating Department is neither the Financial and Administrative Services Department nor the Engineering and Inspections Department) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the S/M/WBE Steering Committee to serve on any GSC purely in an advisory and non-voting capacity. On a quarterly basis for the first year following the effective date of this Program Plan, GSC ex-officio members shall report on the goal-setting process to the S/M/WBE Steering Committee; in turn, the S/M/WBE Steering Committee shall report to City Council. Said ex-officio members shall be required to adhere to all confidentiality and conflict of interest disclosure requirements imposed on voting members. At the City Manager's discretion, one or more GSCs may be appointed to serve in this capacity (e.g., by industry, by Originating Department, or by any other rational structure that serves the City's best interests in efficiently processing bid solicitations and applying Program Elements to them). The GSC establishes SBE - M/WBE Program goals (e.g., Annual Aspirational Goals and contract-by-contract subcontracting goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Program Elements are to be applied to specific contracts based upon various criteria.

At a minimum, the GSC **shall**:

1. Meet as often as it deems necessary to accomplish its duties as outlined in this Program Plan, but not less than once monthly;

2. Review in advance proposed contract bid specifications to ensure that they are not unnecessarily restrictive and do not adversely affect the ability of SBE and M/WBE firms to competitively bid without adequate business justification;
3. Formulate, recommend to the City Manager or designee and implement additional rules and procedures for SBE - M/WBE Program goal-setting and other aspects of its duties in selecting and applying specific Program Elements to City solicitations and contracts in an efficient and effective manner; and
4. Monitor and support the implementation of the SBE - M/WBE Program.

C. Annual Aspirational Goal-Setting

The GSC shall establish non-mandatory annual aspirational percentage goals for overall M/WBE prime and subcontract participation for each major category of contracting at the City. Annual Aspirational Goals are to be established each fiscal year for Construction, Professional Services, and Goods and Other Services contracts. These Annual Aspirational Goals for M/WBE participation in the City contracts shall be established in each of these categories based upon the combined M/WBE availability by industry in accordance with its related factual predicate. These Annual Aspirational Goals are to be adjusted hereafter by the City on an annual basis based upon the relative M/WBE availability data to be collected by the City through its CBR. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the SBE - M/WBE Program Plan on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

D. Contract-by-Contract Subcontracting Goal-Setting

All subcontracting goals authorized under this Program Plan are intended to be established by the GSC and implemented only on a contract-by-contract basis. It is intended that such goal-setting will be based upon careful analysis of the availability of Commercially Useful subcontracting opportunities within a given contract and the relative availability of SBE - M/WBE firms to perform required tasks on such subcontract opportunities. Such contract-by-contract goal-setting shall be based upon reasonably reliable Respondent and Subcontractor availability data. Compliance with contract-specific subcontracting goals shall also require compliance with Good Faith Efforts and waiver procedures as established below in Sections VII. E through H. The EBOO and City Attorney's Office shall also ensure that contract language with the City's prime contractors contains flow-down provisions sufficient to manifest these SBE and M/WBE subcontracting goals for each tier of subcontractors performing on City contracts.

E. Mandatory Acts of Good Faith Efforts

Using the directories of certified SBE and M/WBE firms maintained by the EBOO, Bidder / Participants shall be required to solicit subcontractor bids and material quotes from individual certified SBEs and M/WBEs having their principal place of business or a Significant Business Presence in the 10-county area that is defined as the Greensboro MSA. The Bidder / Participant shall solicit bids and quotes from SBEs and M/WBEs to perform subcontracts for a Commercially Useful Function on behalf of the Bidder / Participant. Such Subcontractor solicitations shall occur no less than ten days in advance of the City's bid due date, and shall, at a minimum, furnish the following information:

1. Bidder's name, address, telephone number, and email address;
2. Project location name, bid solicitation number, and description;
3. Description of areas of work to be subcontracted or materials to be supplied;
4. Location and availability of project plans, specifications, or blueprints;
5. The identity and contact information of the Bidder / Participant's contracting representative; and
6. Location, date, and time when subcontractor bids or quotes must be received by Bidder / Participant;

If the Bidder / Participant does not receive a response from the solicited subcontractors, the Bidder / Participant must advise the EBOO that no response was received. Moreover, the Bidder / Participant shall ensure that flow-down provisions reflecting such mandatory Good Faith Efforts requirements (and also all other requirements of this Program Plan) shall be inserted in, and be enforceable at, each tier of subcontracting that it may use to fulfill its contractual obligations to the City.

A Bidder / Participant shall consider all subcontractor bids or quotes received from SBEs or M/WBEs and will not reject such bids without sound and documented reasons based upon a thorough understanding of the prospective subcontractor's capabilities. If a subcontract is not awarded to a certified M/WBE subcontractor that has provided a bid or quote to the Bidder / Participant, the Bidder / Participant must state in writing the reasons for the denial of subcontract award. This requirement applies to the Bidder / Participant regardless of the tier of subcontracting involved.

A Bidder / Participant may not reject the proposal or price quote of an M/WBE subcontractor on the basis that the M/WBE subcontractor is unable to secure the necessary bonding. Rather, the Bidder / Participant must either waive the bonding requirement or provide the necessary bonding on behalf of the M/WBE.

F. Other "Good Faith Efforts" Considerations

In determining whether the Bidder / Participant has made Good Faith Efforts, the EBOO will evaluate all efforts made by the Bidder / Participant and will determine compliance with these efforts. The EBOO will take into account the following:

- 1) Whether the Bidder / Participant attended any pre-solicitation or pre-bid meetings that were scheduled by the City;
- 2) Whether the Bidder / Participant advertised in general circulation, trade association, and minority-focused media concerning the subcontracting opportunities at least 14 days in advance of the bid due date;
- 3) Whether the Bidder / Participant provided written notice at least ten days in advance of the bid due date to all certified M/WBE subcontractors that are reasonably qualified in the areas of specialty or the industry segments that are being subcontracted;

- 4) Whether the Bidder / Participant followed up initial solicitation of interest by contacting certified M/WBEs to determine with certainty whether the M/WBEs were interested;
- 5) Whether the Bidder / Participant sub-divided scopes of work into economically feasible units in order to increase the likelihood that available M/WBE firms would be willing to bid and would be able to perform subcontracts at levels that would satisfy subcontracting goals;
- 6) Whether the Bidder / Participant provided interested M/WBE prospective subcontractors with adequate information about the availability of plans, blueprints, specifications, and requirements of the contract at least ten days in advance of the bid due date.
- 7) Whether the Bidder / Participant has provided written documentation of good faith negotiations between the Bidder / Participant and all of its prospective subcontractors;
- 8) Whether the Bidder / Participant effectively used the services of the City's available minority trade associations, community organizations, state and local government certification offices, and supplier diversity consultants to identify the universe of certified M/WBE firms that are ready, willing, and able to perform subcontracts on the project; and
- 9) Whether "other" categories of certified North Carolina Secretary of the Administration HUB-certified firms were utilized in addition to those categories that are recognized by the City of Greensboro.

G. Review of Good Faith Efforts Documentation

City bid solicitations that require Good Faith Efforts by Bidder / Participants to satisfy M/WBE subcontracting goals shall also require that any request for a reduction or waiver of the M/WBE subcontracting goal must be submitted by the Bidder / Participant to the EBOO no later than the bid due date, and that such waiver requests must also be accompanied by the submission of documentation of the above Good Faith Efforts no later than the bid due date. Any bid that fails to satisfy the M/WBE subcontracting goals and that also fails to satisfy the requirements for a formal request for reduction or waiver of the M/WBE subcontracting goals that is accompanied by adequate Good Faith Efforts documentation shall be rejected by the City as non-responsive. The EBOO shall have responsibility for evaluating the Good Faith Efforts documentation for compliance with these guidelines. Furthermore, if the EBOO determines that such documentation is inadequate to establish Good Faith Efforts, the non-responsive bid shall be rejected and the technical / price portion of the Bidder / Participant's bid package shall be returned to the Bidder / Participant unopened. (For more details about the procedures for requesting waivers and exceptions to the SBE-M/WBE Program Plan, see Section VII. H. below).

H. Exceptions and Waivers

If a Bidder / Participant is unable to comply with the Program Element requirements imposed by the GSC under the terms of this Program Plan, such Bidder / Participant shall submit, as part of the response, a request for waiver at the time of response submittal. The formal waiver request form shall be placed in a separate sealed envelope plainly marked ("Good Faith Efforts - Waiver Request") and labeled on the outside to include the bidder's name, return address, and telephone number. The good faith efforts - waiver request envelope shall include specified documentation which demonstrates a Good Faith Effort to comply with the requirements as described under the selected Program Elements. Alternatively, if the Bidder / Participant is able to comply with the Program Element requirements imposed by the GSC under the terms of the Program Plan, it shall submit in this first sealed envelope

the executed Letter of Intent forms and other completed forms required by the EBOO to demonstrate compliance with these SBE or M/WBE Program Element requirements.

The technical and price portion of the Bidder / Respondent's bid shall be placed in a second sealed envelope that is plainly marked (Technical Bid and Cost Proposal), with the outside of the envelope labeled with the bid solicitation number, the name of the bidder, the bidder's return address, and phone number.

At bid opening, all good faith effort - waiver request envelopes shall be opened first. No technical bid - cost proposal envelopes shall be opened until the EBOO has first reviewed all waiver requests and made a final determination either granting or denying the waiver requests. If any waiver request is granted, then the EBOO shall instruct the Originating Department to amend the bid solicitation by modifying or waiving the Program Element SBE – M/WBE participation requirements accordingly for all prospective bidders, and to return all sealed technical bid – cost proposal envelopes unopened to the respective Bidder / Participants. In the event no requested waivers are granted by the EBOO, the technical bids and cost proposals submitted by any Bidder / Participants whose Good Faith Effort – Waiver Request envelopes fail to demonstrate compliance with the SBE – M/WBE participation requirements shall be rejected as non-responsive and shall be returned unopened to the Bidder / Participant. All remaining sealed technical bid – cost proposals from Bidder / Participants that have been found to be in compliance with Program Element SBE – M/WBE participation requirements shall then be opened and evaluated for purposes of award.

If, after award of a contract, the contractor is unable to meet the participation requirements for SBE - M/WBEs specified at response submittal, the contractor must first exercise Good Faith Efforts in an attempt to substitute certified SBE - M/WBE subcontractors to fulfill the requirements; the requested substitution must be approved in advance by the Director of EBOO or designee, and the Originating Department Director or designee. If, after reasonable Good Faith Efforts, the contractor is unable to find a substitute SBE - M/WBE, a post-award waiver may be requested. The request shall document the reasons for the contractor's inability to meet the goal requirement. In the event the contractor is found not to have performed Good Faith Efforts in its attempt to find a suitable substitute for the initial SBE - M/WBE proposed utilization, in the City's sole discretion, the City may terminate the contract for material breach. If the City terminates the contract, the City may then award the contract to the next lowest Responsible and Responsive Respondent or, in the alternative, re-solicit the contract with the terminated vendor being disqualified from participation in the re-solicitation.

Prior to submission of a prospective solicitation to the GSC, and prior to the public release of solicitations, a City Originating Department may request the Director of EBOO or designee to waive or modify the application of Program Element requirements for SBE - M/WBE participation by submitting its reasons in writing. The Director of EBOO or designee may grant such a waiver or modification upon determination that:

- i) The extraordinary and necessary requirements of the contract render application of the Program Elements infeasible or impractical;
- ii) The nature of the goods or services being procured are excluded from the scope of this Program Plan; or
- iii) Sufficient qualified SBE - M/WBEs providing the goods or services required by the contract are unavailable in the Relevant Market area of the project despite every reasonable attempt to locate them.

Otherwise, such solicitations shall be forwarded to the GSC for review and possible application of Program Elements. Any further requests from a City Originating Department for modification of Goal amounts or other Program Elements as established by the GSC shall be presented to the City Manager or designee, whose decisions on such requests shall be final.

The GSC may waive the application of Program Elements to enhance SBE - M/WBE utilization for a specific contract under the following circumstances:

- i) Whenever the needed goods or services are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or the procurement is necessary to preserve or protect the health and safety of the City's residents; and
- ii) The Originating Department certifies to the GSC and City Manager or designee:
 - a) That an emergency exists which requires goods or supplies to be provided with such immediacy that it is unable to comply with the requirements of this Program Plan; and
 - b) That the prospective contractor is an SBE - M/WBE or, if not, that the prospective contractor will make a Good Faith Effort to utilize SBE - M/WBEs.

Final approval of all such waivers shall be made by the City Manager or designee.

I. Determinations of Program Compliance and Non-Compliance

The EBOO, along with contracting staff of each City department, shall monitor compliance with these Program Element requirements during the term of the contract. If it is determined that there is cause to believe that a Prime Contractor or Subcontractor has failed to comply with any of the requirements of this Program Plan, or with the contract provisions pertaining to SBE - M/WBE utilization, the EBOO Director shall so notify the Originating Department and the contractor. The Director of EBOO or designee may require such reports, information and documentation from contractors, Respondents and the head of any City department, division or office as are reasonably necessary to determine compliance with the Program Plan requirements, within fifteen (15) calendar days after the notice of noncompliance. If the requested materials are not received within fifteen (15) calendar days, then a finding of noncompliance is determined and appropriate penalties and sanctions will apply as stated in Section VII. J. of this Program Plan.

It is the joint responsibility of the Director of EBOO or designee and the Director of the Originating Department or designee to attempt to resolve the noncompliance with the requirements of this Program Plan, or the contract provisions pertaining to SBE - M/WBE utilization, within fifteen (15) calendar days. If noncompliance cannot be resolved within the fifteen (15) calendar days, the Director of EBOO or designee and the Director of the Originating Department or designee shall submit written recommendations to the City Manager or designee and if the City Manager or designee concurs with the finding, such sanctions as stated in Section VII. J. of this Program Plan shall be imposed.

Whenever the Director of EBOO or designee finds, after investigation, that an Originating Department has failed to comply with the provisions of this Program Plan or the contract provisions pertaining to SBE - M/WBE utilization, a written finding specifying the nature of the noncompliance shall be transmitted to the Originating Department and the Director of EBOO or designee shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve

the noncompliance, the Director of EBOO or designee shall transmit a copy of the finding of noncompliance, with a statement that conciliation was attempted and failed, to the City Manager or designee who shall take appropriate action under this Program Plan to secure compliance.

The Director of EBOO or designee, through the City Manager or designee, shall submit a written annual report to the S/M/WBE Steering Committee and the City Council on the progress of the City toward the utilization goals established by this Program Plan together with an identification of problems and specific recommendations for improving the City's performance. This report shall be issued semi-annually during the first two years following this Program Plan effective date, based on available data, and then annually thereafter.

The EBOO Director and Originating Departments shall work closely with the City Attorney's Office to include language in all City contracts that ensures compliance with the SBE - M/WBE Program. This language should also include a time period for the contractor to correct any and all deficiencies not later than fifteen (15) calendar days after notification of non-compliance.

J. Penalties and Sanctions for Non-Compliance

Upon determination and recommendation of sanctions by the City Manager or designee regarding the failure of a contractor, vendor, Respondent or other business representative to comply with any portion of this Program Plan, the non-complying party shall be subject to any or all of the following penalties:

- i) Suspension of contract;
- ii) Withholding of funds;
- iii) Rescission of contract based upon a material breach of contract pertaining to SBE - M/WBE Program compliance;
- iv) Refusal to accept a response or proposal; and
- v) Disqualification of a Respondent, contractor or other business from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

It is a violation of this Program Plan to:

- i) Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently obtaining, retaining or attempting to obtain or retain Certification status as an SBE, MBE, WBE, or M/WBE for purposes of this Program Plan.
- ii) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of this Program Plan.
- iii) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an SBE - M/WBE.

- iv) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of this Program Plan.
- v) Make false statements to any entity that any other entity is or is not certified as an SBE - M/WBE for purposes of this Program Plan.

Any person who violates the provisions of this section shall be subject to these sanctions, as well as any other remedies available under law up to the maximum penalty provided by law.

K. Certification and Re-Certification (SBE and M/WBE Status)

Certification of all SBE and M/WBE firms shall be the responsibility of the EBOO. The EBOO shall be responsible for developing, issuing and reviewing all SBE and M/WBE Certification and re-Certification forms and applications in a manner that is consistent with the standards, definitions and intent established by this Program Plan. The EBOO shall also maintain an automated and up-to-date registry of all certified SBE and M/WBE firms that is readily available to the general public, as well as City personnel.

In executing its responsibility in connection with these Certifications, the EBOO may contract with a State government agency, regional, or private Certification agency/organization for the purpose of issuing Certifications in a manner that is consistent with the standards, definitions, and eligibility standards established under this Program Plan.

A firm eligible for Certification(s) under this SBE - M/WBE Program shall be an Independently Owned and Operated business. The ownership and Control by Minority Group Members or Women shall be real and substantial, and shall be indicated by customary incidents of ownership as demonstrated by an examination of the substance, rather than the form, of ownership and operating arrangements. In determining whether a potential firm is an Independently Owned and Operated business, the certifying agency considers all relevant factors including, but not limited to:

- i) The date the business was established;
- ii) The adequacy of its resources for the work of the contract; and
- iii) The degree to which financial, equipment leasing, supplier and other relationships with non-minority businesses vary from industry practice.

The Minority Group Member or women owners must possess and exercise the power to direct the management and policies of the firm and to make day-to-day decisions, as well as any decisions on matters of management policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the Minority Group Member or women owners. There shall be no restrictions by partnership agreements, charter requirements, operating agreements or other arrangements which prevent the Minority Group Member or women owners from making business decisions of the firm without the cooperation or vote of any owner that is not minority or female.

Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an M/WBE. Certification as SBE and M/WBE firms will be in accordance with the definitions established in Section IV. of this Program Plan.

A claim of minority status as a Minority Group Member must be directly related to the applicant's parents' status. Neither birthplace nor marriage has any bearing on minority status of the Certification applicant. All Minority Group and women owners of certified firms must be Individuals that are lawfully residing in, or are citizens of, the United States or its territories.

A firm seeking Certification or re-Certification status under this Program Plan shall cooperate fully with the City in supplying additional information and in facilitating a site visit of the enterprise which may be requested in order to make a determination. Failure or refusal to cooperate shall result in denial or repeal of Certification.

Proof of Certification by another certifying entity may be accepted by the City in lieu of the City's own Certification process if the certifying entity adheres to the same or similar policies and standards as those established by the City. To the extent the City's factual predicate for its SBE - M/WBE Program requires, under applicable law, a narrower definition of M/WBE firm categories (e.g., due to ethnicity / gender of ownership or relevant geographic market considerations), the City shall limit the categories of M/WBE firms certified by other jurisdictions that shall be eligible for participation in the City's SBE - M/WBE Program as necessary to ensure that the Race-Conscious remedial relief provided by the City's Program remains appropriately narrowly-tailored.

Before accepting another jurisdiction's SBE - M/WBE Certification program, the EBOO shall examine the definitions, standards and Certification practices of the program to ensure that it adheres to established City Certification guidelines.

If the owners of the business who are not Minority Group Members or women are disproportionately responsible for the operation of the firm, the firm is not Controlled by minorities and/or women and may not be considered an M/WBE within the meaning of this Program Plan. Where the actual management of the business is contracted out to Individuals other than the owner, those persons who have the ultimate power to hire and fire the managers may, for the purposes of this Program Plan, be considered as Controlling the business.

All securities that constitute ownership or Control of a corporation for purposes of establishing it as an M/WBE under this Program Plan shall be held directly by Minority Group Members or women. Securities held in trust, or by any guardian for a minor, may not be considered as held by Minority Group Members or women in determining the ownership or Control of a corporation.

The contributions of capital or expertise by the Minority Group Member or women owners to acquire their interests in the business shall be real and substantial. Examples of insufficient capital contributions include:

- i) A promise to contribute capital;
- ii) A note payable to the business or its owners who are not Minority Group Members or Women; and
- iii) Contributions in labor or expertise that result solely in employee compensation, without participation in business profits as an owner.

Special consideration of the following additional circumstances in determining eligibility:

- i) Newly-formed businesses and businesses whose ownership or Control has changed since the date of the advertisement of the contract shall be closely scrutinized to determine the reasons for the timing of the formation of, or change in, the businesses;
- ii) A previous or continuing employer–employee relationship between or among present owners shall be carefully reviewed to ensure that the employee–owner has management responsibilities and capabilities discussed in this Program Plan; and
- iii) Any relationship between an M/WBE and a business that is not an M/WBE, but that has an interest in the M/WBE, shall be carefully reviewed to determine if the interest of the non-minority business conflicts with the ownership and Control requirements of this Program Plan.
- iv) Once certified, an SBE or M/WBE firm shall update its status biennially by submitting a Certification affidavit. If ownership or Control of the firm has changed, the SBE or M/WBE firm shall submit a new Certification affidavit to the EBOO, or its contracted Certification agency, within thirty (30) days of the change.
- v) The certifying entity will notify applicants of staff’s determinations on Certification and re-Certification status.

Once denied Certification, a firm may not re-apply for Certification until the time indicated in the Certification entity’s policy.

A firm shall be de-certified when it no longer meets the eligibility requirements for Certification, and such de-certified firms shall not be eligible to re-apply for Certification except in accordance with the graduation and suspension provisions of this Program Plan.

Complaints regarding the Certification status of a firm shall be forwarded to the EBOO for investigation of any possible violations of this Program Plan.

L. Graduation and Suspension

The EBOO shall graduate, suspend or terminate an SBE or M/WBE firm from the SBE - M/WBE Program established by this Program Plan if, under Program guidelines, the firm no longer is eligible for the Program’s assistance, nor qualifies for its remedial benefits. The EBOO shall be responsible for monitoring and conducting periodic reviews of the size, City contract participation levels, and conduct of all certified SBE and M/WBE firms to determine when they should be graduated, suspended or terminated from the respective programs in a manner consistent with the standards, definitions and intent established by this Program Plan. The EBOO shall also ensure that its directory of certified SBE and M/WBE firms accurately and timely reflects the graduation, suspension or termination of certified firms. In making the determination required by this paragraph, the EBOO shall, to the extent practicable, adhere to the following guidelines:

- (a) SBE and M/WBE firms shall be graduated from participation under the SBE - M/WBE Program’s

Program Elements when the firms are no longer eligible based upon the Certification standards and definitions set forth in this Program Plan.

- (b) Certified SBE firms shall be graduated from the SBE Program when re-Certification documents reflect that on average, over the last three consecutive years, the SBE firm's annual revenues or number of employees exceed fifty (50) percent of the U.S. Small Business Administration size standards for the relevant Industry Category.
- (c) Certified M/WBE firms shall be temporarily suspended from participation under any race- or gender-conscious Program Elements for the remainder of any calendar year in which the firm has cumulatively received more than \$5 million in City contract or resulting subcontract payments. Provided the suspended firm has not exceeded the size standards and still meets other Certification requirements for an M/WBE, such firms may resume participation in race-and gender-conscious Program Elements the following calendar year.
- (d) M/WBE firms shall be graduated from the M/WBE Program upon whichever of the following events occurs first:
 - i) The M/WBE firm cumulatively receives \$15 million in City prime contract and subcontract payments in each of two consecutive calendar years; or
 - ii) Upon submission of re-Certification documents that reflect the firm's average annual revenues or number of employees for the last three consecutive years have exceeded fifty (50) percent of the SBA's small business size standards for annual revenues or number of employees for the Relevant Industry.

Provided, however, that graduated M/WBE firms shall be eligible to apply one time for M/WBE re-Certification following the expiration of the two-year period immediately following graduation. Such application for M/WBE re-Certification shall only be granted on condition that the graduated M/WBE firm presents documentation as required by the EBOO that establishes that the M/WBE firm's annual revenues and number of employees have fallen below fifty (50) percent of the SBA's small business size standards for the Relevant Industry for two consecutive years of the post-graduation period. Each graduated M/WBE firm shall be entitled to only one such opportunity to apply for re-Certification, and all second graduations of M/WBE firms shall be permanent.

- (e) For SBE and M/WBE firms that are certified by an agency that is recognized by the City, but does not have graduation provisions, the City will periodically audit these SBE and M/WBE firms to ensure that they meet the Certification criteria contained within this Program Plan.

M. Program Compliance Responsibilities

Responsibility for SBE – M/WBE Program Plan Compliance is shared as follows:

1. Equal Business Opportunity Office

As noted above in Section VII. I., the EBOO has primary responsibility for undertaking investigations to ensure that Originating Departments and City vendors are complying with the provisions of this Program Plan. In the event of non-compliance, the EBOO recommends the imposition of appropriate penalties and sanctions. In addition, the EBOO has authority to general oversight and management of

the Goal Setting Committee process, certification, graduation, Good Faith Effort waivers, and reporting requirements.

2. Vendors

To facilitate the EBOO completing its responsibilities in administering SBE - M/WBE Program Elements, a vendor shall:

- (a) Permit the EBOO to inspect any relevant matter, including records and the jobsite, and to interview Subcontractors and workers (field compliance).
- (b) If performing a City Construction contract, ensure that all Subcontractors are paid any undisputed amount to which the Subcontractor is entitled within 10 calendar days of receiving a progress or final payment from the City and otherwise comply with City's contract terms and conditions which sets forth the obligations of the Prime Contractor and Subcontractors and the remedies for delinquency or nonpayment of undisputed amounts.
- (c) Notify the City in writing of any changes to their utilization and/or subcontracting plan. All changes (substitution and/or termination) must be approved in advance and in writing by the EBOO.
- (d) Amendment for unforeseen circumstances: If at any time after submission of a solicitation response and before execution of a contract, the apparent successful Respondent determines that a certified SBE or M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful Respondent shall immediately notify the EBOO. Any desired change in the SBE or M/WBE participation schedule shall be approved in advance by the EBOO and shall indicate the Prime Contractor's Good Faith Efforts to substitute another certified SBE or M/WBE Subcontractor (as appropriate) to perform the work. Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the EBOO.
- (e) Notify the Originating Department and EBOO of transfer or assignment of contract with the City.
- (f) Shall retain record of all Subcontractor payments for a minimum of four years following project termination date.

3. Originating Departments

It shall be the responsibility of each Originating Department to ensure that solicitations emanating from the department adhere to the procedures and provisions set forth in this Program Plan.

- (a) The Originating Department Director or designee shall assume primary responsibility for achieving the objectives of this SBE - M/WBE Program within the Originating Department and shall review, on a continuing basis, all aspects of the Program's operations to assure that the purpose is being achieved.
- (b) Originating Departments shall maintain accurate records for each contract awarded, including unsuccessful Respondents, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit responses from SBE

- M/WBEs, and all subcontracts awarded by the Prime Contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the Subcontractor(s).

(c) The Originating Department shall take the following actions to ensure that SBE - M/WBEs have the maximum practicable opportunity to participate on City contracts:

- i) Advertise Formal Solicitations in minority-targeted media before responses are due for specific contracting opportunities for no less than the length of the solicitation period required by state law;
- ii) Post all Formal Solicitations on the City website, for the solicitation period required by state law for the type of procurement, and then direct targeted e-mail alerts containing links to the webpage where such City solicitations are posted. Such e-mail alerts should be directed to all Respondents that have registered with the appropriate commodity/industry codes on the City's CBR system;
- iii) Encourage all prospective Prime Contractor Respondents to City solicitations to post their subcontract opportunities on the City webpage where the solicitation specifications have been posted by the City.
- iv) Send notification before solicitations are due to minority and women trade associations and contractor's associations regarding pending Formal Solicitations in accordance with state law;
- v) Include the Commercial Non-Discrimination Policy statement, compliance language and any materials required by this Program Plan in all contracts and solicitation documents;
- vi) Preview and evaluate all contracting opportunities in an effort to de-bundle the total requirements of a contract into smaller units to promote maximum and reasonable opportunities for SBE - M/WBE participation, without making separate, sequential or component purchases in violation of state purchasing laws;
- vii) Establish procedures to ensure that all contractors submitting correct invoices are paid within thirty (30) days and that Subcontractor are paid within ten (10) days after the City pays the Prime Contractor;
- viii) Ensure that a City contract is not executed and a Notice to Proceed is not issued until binding agreements between the Prime and subcontracting SBE - M/WBEs have been executed by all parties and submitted to the Originating Department;
- ix) Ensure that all required statistics and documentation are submitted to the EBOO as requested; and
- x) If circumstances prevent the Originating Department from meeting notification requirements contained herein, the Originating Department shall engage in direct and extensive outreach to SBE - M/WBE associations or other relevant organizations to inform them of the contracting opportunity, unless the circumstances are exigent and an emergency exists that requires immediate action.

- xi) Notify the EBOO Director of all change orders and amendments to contracts that are subject to this Program Plan and take necessary steps to ensure that Program Elements applied to the contract by the GSC are also extended and enforced, to the maximum practical extent, with regard to any modified scope of work under the terms of such change orders and contract amendments.
- xii) Inform and encourage P-Card users to use online CBR directory of certified SBE and M/WBE firms to solicit quotes for P-Card purchases; establish supplier diversity as a job performance criteria that is rewarded through public recognition and perk rewards such as free public parking or tickets to a civic or sporting event.

N. Small Minority and Women Business Enterprise Steering Committee (S/M/WBE Steering Committee)

This voluntary eleven-member citizens committee is made up of business trade organization representatives and small or minority business owners, and appointed by the EBOO as an advisory group to: (a) assist the Director of Equal Business Opportunity Office (EBOO) or designee, the City Manager or designee, and City Council in reviewing and monitoring the ongoing administration of the Program Plan and assessing its effectiveness in enhancing SBE - M/WBE participation in City contracts; (b) facilitate activities and outreach efforts by the EBOO Director, the Economic Development and Business Support Department, or Originating Departments; and (c) make recommendations to the EBOO Director or designee, the City Manager or designee, and City Council concerning modifications of such Program Elements and various policies and procedures established pursuant to this Program Plan. S/M/WBE Steering Committee members may participate as advisory non-voting members of Goal Setting Committees.

O. SBE - M/WBE Program Review, Factual Predicate Review, Modification, and Sunset

Beginning no later than July 1, 2015, and every five years thereafter, the City shall issue a Request For Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study, present disparity study results to the City, and following City review and a public comment period regarding those study findings and recommendations, the City shall consider any proposed modifications to, or sunset of, this Program Plan. As part of this review process, the City Manager or designee shall make, or recommend to City Council as appropriate, modifications to the procedures or substantive provisions of this Program Plan, and submit any necessary draft legislation to the City Council for adoption as appropriate to effectuate the continuation, modification or termination of the SBE - M/WBE Program Plan. Absent re-authorization by the City Council by January 1, 2017, for the continuation or modification of the SBE – M/WBE Program Plan, this Program Plan shall be sunset effective as of that date.

VIII. Severability Clause

If any section, paragraph, sentence, clause, phrase or word of this SBE - M/WBE Program Plan, or the application thereof, to any person or circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Program Plan which can be given effect without the invalid provision or application, and to this end, all the provisions of this Program Plan are hereby declared to be severable.